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7 **BEFORE THE**
BOARD OF REGISTERED NURSING
8 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

9
10 In the Matter of the Accusation Against:

Case No. *2011-987*

11 **DAVID MICHAEL MELLOTT**

A C C U S A T I O N

12 **927 Wind Drift Drive**
Carlsbad, CA 92011

13 **Registered Nurse License No. 665392**

14 Respondent.

15
16 Complainant alleges:

17 **PARTIES**

18 1. Louise R. Bailey, M.Ed., R.N. ("Complainant") brings this Accusation solely in her
19 official capacity as the Executive Officer of the Board of Registered Nursing ("Board"),
20 Department of Consumer Affairs.

21 2. On or about September 12, 2005, the Board issued Registered Nurse License Number
22 665392 to David Michael Mellott ("Respondent"). The Registered Nurse License was active at
23 all times relevant herein but became delinquent on February 28, 2009 and has not been renewed.

24 **JURISDICTION AND STATUTORY PROVISIONS**

25 3. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent
26 part, that the Board may discipline any licensee, including a licensee holding a temporary or an
27 inactive license, for any reason provided in Article 3 (commencing with Code section 2750) of
28 the Nursing Practice Act.

1 CAUSE FOR DISCIPLINE

2 (Disciplinary Action by the Florida Board of Nursing)

3 8. Respondent is subject to discipline pursuant to Section 2761 subdivision (a)(4) of the
4 Code on the grounds of unprofessional conduct because he was disciplined by the Florida Board
5 of Nursing ("Florida Board"), as follows:

6 9. On or about September 28, 2009, the Florida Board issued a Final Order in the
7 disciplinary action entitled, *Department of Health v. David Michael Mellott*, Case No. 2008-
8 17041. In that Final Order, after Respondent failed to respond to an administrative complaint
9 filed against him, the Florida Board disciplined Respondent's license by placing it on probation
10 for two years, indefinitely suspending it until Respondent underwent an evaluation by a substance
11 abuse intervention group, and publicly reprimanding it. The Final Order found that the
12 uncontested facts of the administrative complaint showed as follows:

13 10. In 2008, while working as a registered nurse at Lee Memorial Health System in Fort
14 Myers, Florida, Respondent engaged or attempted to engage in the possession, sale, or
15 distribution of controlled substances by misappropriating fentanyl, a Schedule II controlled
16 substance under both California and Florida law,¹ from his employer.

17 11. Respondent also failed to document his misappropriation of fentanyl on the charts of
18 two different patients.

19 12. Under Section 2761 subdivision (a)(4) of the Code, the Florida Board's disciplinary
20 action against Respondent for diverting controlled substances for his own use and for failing to
21 properly document patient charts is ground for the California Board to take disciplinary action.

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26 _____
27 ¹ Fentanyl is a opiate used for pain relief. See California Health and Safety Code section
28 11055(c)(8)(listing fentanyl as a Schedule II opiate) and Florida Statutes Section
893.03(2)(same).

PRAYER

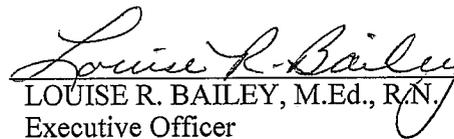
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1.1. Revoking or suspending Registered Nurse License Number 665392, issued to David Michael Mellott;

1.2. Ordering David Michael Mellott to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code Section 125.3; and,

1.3. Taking such other and further action as deemed necessary and proper.

DATED: June 20, 2011


LOUISE R. BAILEY, M.Ed., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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